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B-162208, Aug. 28, 1967

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B-162208, AUG. 28, 1967

STATES, ETC. - SIDEWALK, ETC. CONSTRUCTION COSTS - RETROACTIVE EFFECT OF PUB. L. 87-869 DECISION TO CERTIFYING OFFICER OF FOREST SERVICE, AGRICULTURE, CONCERNING LIABILITY TO REIMBURSE CITY (ROOSEVELT, UTAH) FOR SIDEWALK, ETC. CONSTRUCTION IN FRONT OF FOREST SERVICE HOUSE PRIOR TO PUB. LAW 89 869. COSTS OF CONSTRUCTION SIDEWALKS, CURBS, AND GUTTERS IN FRONT OF FOREST SERVICE HOME BY CITY OF ROOSEVELT, UTAH, PRIOR TO DATE OF ENACTMENT OF PUBLIC LAW 87-869, WHICH AUTHORIZED PAYMENTS TO CITIES FOR CONSTRUCTION OF SUCH APPURTENANCES MAY NOT BE PAID SINCE GENERAL RULE IS THAT STATUTES ARE CONSTRUCTED TO APPLY PROSPECTIVELY UNLESS RETROACTIVE CONSTRUCTION IS REQUIRED BY EXPRESS LANGUAGE OR NECESSARY IMPLICATION SINCE PUB. LAW 87- 869 DOES NOT EXPRESS RETROACTIVE INTENTION PAYMENT PRECLUDED.

TO MR. E. C. CRARY:

BY LETTER OF JULY 27, 1967, YOU SUBMITTED FOR OUR DECISION THE QUESTION WHETHER SECTION 9 OF THE ACT OF OCTOBER 23, 1962, PUB. L. 87 869, 16 U.S.C. 555B, APPLIES RETROACTIVELY TO MAKE AVAILABLE FOREST SERVICE FUNDS FOR PAYMENT OF $592.78 TO ROOSEVELT CITY CORPORATION, ROOSEVELT, UTAH. YOU INDICATE THAT IN 1955 THE CITY CONSTRUCTED A SIDEWALK, CURB AND GUTTER IN FRONT OF A FOREST SERVICE HOUSE LOCATED IN THE CITY. CONSTRUCTION WAS COMPLETED AND ASSESSMENT LEVIED AGAINST THE FOREST SERVICE AND OTHER PROPERTY OWNERS PRIOR TO THE DATE OF ENACTMENT OF PUBLIC LAW 87-869.

THE GENERAL RULE IS THAT STATUTES ARE CONSTRUED TO APPLY PROSPECTIVELY UNLESS A RETROACTIVE CONSTRUCTION IS REQUIRED BY EXPRESS LANGUAGE OR NECESSARY IMPLICATION. SEE 39 COMP. GEN. 286, 290. SECTION 9 READS AS FOLLOWS:

"FUNDS AVAILABLE TO THE FOREST SERVICE SHALL BE AVAILABLE FOR EXPENSES OF, OR PAYMENT OF ASSESSMENT FOR, CONSTRUCTION OF SIDEWALKS, CURBS, OR STREET PAVING ALONG THE BOUNDARY OF GOVERNMENT-OWNED RESIDENTIAL OR OTHERWISE IMPROVED LOTS.'

THIS LANGUAGE DOES NOT EXPRESS AN INTENTION THAT THE PROVISION OPERATES RETROACTIVELY, NOR DOES THE LEGISLATIVE HISTORY. SEE S. REPT. NO. 1803, 87TH CONG., 2D SESS. 2, 7; H. REPT. NO. 2377, 87TH CONG., 2D SESS. 3, 7; HEARINGS BEFORE THE SUBCOMMITTEE ON FORESTS OF THE COMMITTEE ON AGRICULTURE, HOUSE OF REPRESENTATIVES, ON H.R. 12434, 87TH CONG., 2D SESS. 95, 108.

THE ACCOUNT, THEREFORE, CANNOT BE PAID, AND THE VOUCHER ENCLOSED WITH YOUR SUBMISSION WILL BE RETAINED IN THIS OFFICE. OUR CONCLUSION MAKES UNNECESSARY AN ANSWER TO YOUR ADDITIONAL QUESTIONS AS TO WHICH FISCAL-YEAR FUNDS WOULD BE AVAILABLE AND THE PAYMENT OF INTEREST ON THE ASSESSMENT.